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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Rick Braumoeller

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SEED INTELLECTUAL PROPERTY LAW GROUP PLLC

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EXAMINER

JEANTY, ROMAIN

ART UNIT

PAPER NUMBER

3623

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/04/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	09/965,125	BRAUMOELLER ET AL.	
	Examiner	Art Unit	
	Romain Jeanty	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 January 0101.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-101 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-58 is/are allowed.
- 6) ☒ Claim(s) 59-101 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Final Office Action is in response to the Amendment filed December 11, 2006. Claims 1-101 are pending in the application.

Response to Arguments

2. Applicants asserted that Jenkins fails to qualify as effective prior art due to lack of a valid priority claim to an earlier-filing application. Applicants further supported their assertion by arguing that the lack of common inventorship between Jenkins and the '400 Provisional prevents Jenkins from obtaining the benefit of the '400 Provisional's filing date. In response, the examiner respectfully disagrees. The examiner reviewed the Jenkin's application 09/984,349 in the original specification in the '349 application, there is a priority claim under 35 USC 119(e) to application 60/243,427. Therefore, Jenkins claims priority to the 60/243,427 and accordingly the Jenkins reference qualifies as prior art.

Applicants' arguments filed December 11, 2006, with respect to claims 1-58 have been fully considered and are persuasive. The prior rejection of claims 1-58 has been withdrawn, and claims 1-58 are now allowed.

Further, applicants' arguments with regard to claims 59-101 are found to be non-persuasive. Applicants argued that the cited prior art fails to teach modeling of future costs of supplying expected future orders as part of determining how to fulfill a current order. In response, the examiner respectfully disagrees because Jenkins does teach determining multiple fulfillment options (100: fulfillment system), each option indicating distribution center to be used (paragraph 290); to include associated cost for each option

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for one or more future orders (paragraph 16: procurement optimization allows fulfillment system to decrease supply cost), the cost calculation to include cost associated with correcting a disparity between actual and desired level of work (production module (400)); and selecting a fulfillment option based upon the future total cost (paragraph 16).

Furthermore, with regard to the Examiner taking official notice, Examiner notes the following discussion of Official Notice taken from the MPEP:

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also *Chevenard*, 139 F.2d at 713, 60 USPQ at 241 (“[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention.”). A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate. If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 (“[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings” to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2). If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate. (MPEP § 2144.03(C))

Applicant still has not “specifically point[ed] out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.” Applicant's broad request for references to support Examiner's statements of Official Notice amounts to nothing more than an unsupported challenge. For these reasons, goodwill costs, potential orders and

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default center for filling orders are taken to be admitted prior art because Applicant's traversal was inadequate. Furthermore, Examiner submits evidence below to support that Official Notice was properly taken.

The Examiner asserts that the concept of utilizing goodwill reduction costs in the field of financial cost accounting and determining future costs as is the case in this application, are old and well known to one of ordinary skill in the art as indicated on pages 8 and 14 of Amazon.com, Inc Form 10-K/A for Fiscal Year 1999, where a value is associated with the impact various business decisions make on customer goodwill as some decisions may cause a decrease in reputation of the company in the eyes of some customers which can in turn cause a decrease in products purchased by that consumer.

The Examiner asserts that the concept of potential orders by potential customers is old and well known to one of ordinary skill in the art in the field of purchasing and supply chain management as indicated in Macready et al (US 2002/0016759) which also teaches about supply chain optimization. Paragraph 281 teaches about the concept of RFQ or request for quote which constitutes potential orders from potential customers. RFQs are a type of order and can be modeled as such during optimization scenarios. The Examiner has taken official notice on the specific limitation of "potential order" and the remaining art rejection has addressed the additional claim limitations.

The Examiner asserts that the concept of a default center from which to fulfill an order is old and well known to one of ordinary skill in the art and indicated in Weber et al (US 2002/0156663). Paragraph 117 cites the use of default or pre-defined values for determining the supply chain, including the location, process and resource(s). The default location constitutes a default center from which the product will ship. In addition, Jenkins

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et al (US 2002/0082954) teaches determining the closest service center that has the product being ordered, where the algorithm used to run this query can be considered means to determine a default center, the closest center.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 68-69 and 71 are rejected under 35 U.S.C. 102(e) as being anticipated by Dunston et al (US 2002/0082954).

As per claim 68, Dunston teaches receiving an indication of an order to be supplied to a recipient (See Figure 4 item (401) where there is a request for a product or order); upon receiving the indication of the order, determining a fulfillment plan for supplying the order to the recipient so to optimize over a period of time extending into the future a specified factor that is affected by supplying one or more expected future order to recipients (See Figure 4 where the system determines the closest service center with the product which constitutes determining a fulfillment plan, where the optimization extending into the future feature is addressed by the determination step of finding the closest center as this will enable faster turn around time from the time the order is placed to the time the customer receives the item. As noted in paragraph 18, the items stored at

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the center are optimized such that the amount and types of products coincide with the market needs in that region, thereby keeping costs and inventory to a minimum.); and indicating to supply the indicated order to the recipient by using the fulfillment plan (The fulfillment plan is indicated in step (408) where the order is sent to the selected service center.).

As per claim 69, Dunston teaches the specified factor is a total cost of supplying multiple orders to multiple recipients that occur over the period of time (paragraph 64: allows for tracking of business activity (tracking cost is a business activity) and performance of service at multiple locations).

As per claim 71, Dunston teaches the order is a potential order and the indicating to supply the order to the recipient by using the plan is based on instruction received from a user in response to providing an indication of the plan (Figure 4: (403), (404), (405), (406) and (407)) (Official notice is taken that both the concept and advantage of a “request for quote” (RFQ) or potential order is well known and expected in the art. It would have been obvious to include RFQs in an ordering processing system for the purpose of gaining a potential order that may realize into an actual order.)

5. Claims 59, and 63 are rejected under 35 U.S.C. 102(e) as being anticipated by Jenkins et al (US 2002/0188499).

As per claim 59, Jenkins teaches determining multiple fulfillment options (100: fulfillment system), each option indicating distribution center to be used (paragraph 290); to include associated cost for each option for one or more future orders (paragraph 16: procurement optimization allows fulfillment system to decrease supply cost), the cost calculation to include cost associated with correcting a disparity between actual and

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desired level of work (production module (400)); and selecting a fulfillment option based upon the future total cost (paragraph 16).

As per claim 63, Jenkins teaches receiving an indication of an order ((210) planning component, places orders), for each distribution center determining a cost that is associated with that center to fulfill the order (paragraph 49: commit system (100) evaluates cost for each option), the determined cost including an estimated future cost of fulfilling at least one future order (paragraph 50: the system looks later than the requested date); and selecting one of the centers to fill the order based on the center having the lowest associated cost (paragraph 49: selects the least cost).

6. Claims 81-85, 87, 94, 96 and 100-101 are rejected under 35 U.S.C. 102(e) as being anticipated by Greamo et al (US 2002/0095307).

As per claim 81, Greamo teaches for each indication of a potential order associated with a customer: evaluating fulfillment options for filling the order by calculating a cost of using each option ((240) select lowest cost option) based upon an expected actual cost of shipping the order (shipping costs would be factored into the lowest cost option) and on a predicted impact that using the option will have on expected future costs of filling future orders; selecting one of the options based upon the calculated costs ((240) select lowest cost option); and upon an indication from a customer to place the potential order, indicating to fill the order using the selected option.

As per claim 82, Greamo teaches for some of the potential orders, after selecting the fulfillment option for the order ((240) select lowest cost option), providing an indication of the selected option to the customer associated with the order ((270) promise order and (290) allow user to view order status) and receiving a response of the selected

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option to place the order (paragraph 48: The commit system 100 preferably processes orders to a customer in real time during step 230. The customer placing their order is expecting immediate feedback, such as if the order can get met, when the order can get met, and if they should place their order.)

As per claim 83, Greamo teaches for some of the potential orders, providing indications of multiple options for the order to the customer in such a manner that the customer could select any option to place the order (paragraph 48: The commit system 100 preferably processes orders to a customer in real time during step 230. The customer placing their order is expecting immediate feedback, such as if the order can get met, when the order can get met, and if they should place their order).

As per claim 84, Greamo teaches receiving an indication from the associated customer to place an order using one of the fulfillment options other than the selected option and indicating to fill the order using the one indicated option (paragraph 48: The commit system 100 preferably processes orders to a customer in real time during step 230. The customer placing their order is expecting immediate feedback, such as if the order can get met, when the order can get met, and if they should place their order).

As per claim 85, Greamo does not explicitly teach the cost of fulfillment options is determined based on changes in customer goodwill. Official notice is taken that it is known that there is a cost associated with goodwill that factors into a company's cost structure, therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to include a goodwill cost component for the purpose of determining an overall cost.

As per claim 87, Greamo teaches the predicted impact that using some of the options will have on future costs of filling orders if they include costs of correcting deviations between an actual and desired amount of inventory at one or more centers (paragraph 22, 24 and 25).

As per claim 94, Greamo teaches a computer readable medium containing a data structure for use in filling orders that is based on costs associated with filling future orders (select lowest cost option (240)), each entry comprising: an indication of a distribution center to be used to fill the order (modify supply chain (270) and group order (280)); an indication of at least one associated cost of use that reflects costs associated with filling one or more future orders based on using the plan to fill the order (select lowest cost option (240)).

As per claim 96, Greamo teaches the associated costs of use for each plan includes at least one cost that reflects a disparity between an actual inventory level and a desired level at one or more centers indicated for the fulfillment plan (Greamo teaches the predicted impact that using some of the options will have on future costs of filling orders if they include costs of correcting deviations between an actual and desired amount of inventory at one or more centers (paragraph 22, 24 and 25).

As per claim 100, Greamo teaches a computer readable medium is a data transmission medium transmitting a generated data signal containing the data structure (paragraph 27: a commit server 110, a network or Web-based business-to-business (B2B) user interface 120, public APIs 130, a batch import 140, a statistics applet 150, a database 160, and a switchover server 170.).

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As per claim 101, Greamo teaches the computer readable medium is one or more computer memories that collectively contain the data structure (paragraph 27: a commit server 110, a network or Web-based business-to-business (B2B) user interface 120, public APIs 130, a batch import 140, a statistics applet 150, a database 160, and a switchover server 170.).

Allowable Subject Matter

7. Claims 1-58 are allowed.

8. Claim 61 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter:

Prior art of record fails to teach if using the fulfillment option for the fulfilling of the order will result in a disparity between an actual level of work and a desired level of work at one or more of the distribution centers indicated by the fulfillment option, including in the projected future cost of use associated with the fulfillment option a cost that reflects a future correction of the work level disparity, and if using the fulfillment option for the fulfilling of the order will result in a disparity between an actual inventory level and a desired inventory level at one or more of the distribution centers indicated by the fulfillment option, including in the projected future cost of use associated with the

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fulfillment option a cost that reflects a future correction of the inventory level disparity as recited in dependent claim 61.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

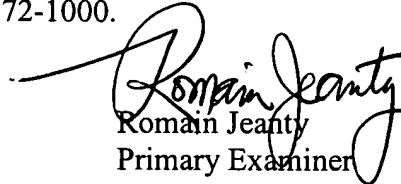
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Romain Jeanty whose telephone number is (571) 272-6732. The examiner can normally be reached on Mon-Thurs 7:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq R. Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Romain Jeanty
Primary Examiner
Art Unit 3623
March 5, 2007